

**Testimony of Representative Tyrone L. Brooks, Sr.
Georgia House of Representatives, District 63
President, Georgia Association of Black Elected Officials**

**Before the House Committee on the Judiciary
Subcommittee on the Constitution**

A Remedy for Georgia v. Ashcroft

Wednesday, November 9, 2005

I want to thank the committee for giving me an opportunity to express my views on the important issues facing the Congress as it considers extending the special provisions of the Voting Rights Act scheduled to expire in 2007. As a 25 year member of the Georgia legislature (House District 63) that passed the redistricting plans that were the subject of the Georgia v. Ashcroft litigation, I am especially pleased to address and try to clear up some misconceptions about the role of the black legislative caucus in the enactment of those plans.

Much progress has indeed been made in recent time in minority voting rights and office holding in my state, and in the South, but it has been made in large measure because of the existence of Section 5 and the other provisions of the Voting Rights Act. Had there been no federal intervention in the voting and redistricting process, it is unlikely that most southern states would have ceased their practices of denying and diluting the black vote. The fact that Section 5 has been so successful is one of the arguments in favor of its extension, not its demise.

As important, the temptation for manipulation of the law in ways that will disadvantage minority voters is as great and

irresistible today as it was in 1982, when Congress last extended Section 5. Removal of the federal oversight that Section 5 provides would doubtlessly result in a significant erosion in minority voting rights. That is evident, I think, from the fact that Georgia has received a total of 80 objections under Section 5 since the last extension of the preclearance requirement. A list of the state's Section 5 objections is attached.

And just this year, the state enacted a photo ID requirement for voting in person that will without doubt deter or prevent a disproportionate number of minorities from voting, as well as the elderly and the disabled. It is not only difficult for many people to get a photo ID, but it costs \$20 and is in essence a fee for voting. Fortunately, the federal court recently issued an injunction prohibiting use of the photo ID requirement, which it said was in the nature of a poll tax.

Many people have asked me, "what new strategies and schemes do you think the states will come up with to suppress the minority vote?" My state didn't bother to come up with anything new, but reenacted one of the most blatant measures adopted after Reconstruction to suppress the black vote - the poll tax. I want to add that there was no evidence whatever presented to the legislature of the need for a photo ID requirement for in-person voting.

The arguments that the state recently made in the Supreme Court in Georgia v. Ashcroft are also very disturbing. They

demonstrate a continuing disdain for the Voting Rights Act and a willingness to disregard the interests of minority voters. **The state argued that Section 5 as applied by the federal court was unconstitutional. It said the retrogression standard of Section 5 should be abolished, that majority black districts were no longer needed, and that minorities should never be allowed to participate in the preclearance process.**

As a long time member of the Georgia legislature and current chair of the Georgia Association of Black Elected Officials, I can confidently say that if we abolished the majority black districts for the state legislature, we would do away with most of the black legislators. The same would be true of black elected officials at the county and local levels. The argument that the state made in its Ashcroft brief failed to take into account how extensive racial bloc voting is, and that when a district is changed from majority black to majority white it depresses the level of black political activity. The enthusiasm, the spirit, the sense that blacks have a chance are all diminished. A formerly majority black district, particularly one without a black incumbent, would have a different voting pattern after it became majority white. Abolishing majority black districts would cause a significant reduction in the number of black office holders. The state's advocacy of such a position is, alone, a compelling reason for extending Section 5.

The most notable exception to the pattern of blacks losing

in majority white districts, and which the state relied upon in its Ashcroft brief, have been judicial elections. Judicial elections, however, are unique in that they are subject to considerable control by the bar and the political leadership of the state. Candidates are essentially preselected through appointment by the governor to vacant positions upon the recommendation of a judicial nominating committee dominated by the bar. The chosen candidate then runs in the ensuing election with all the advantages of incumbency. Judicial elections are low key, low interest contests in which voters tend to defer to the choices that have previously been made. Robert Benham, elected to the court of appeals in 1984 and the state supreme court in 1990, and Clarence Cooper, elected to the court of appeals in 1990, were preselected in this manner.

Benham received special treatment in other ways. The governor felt they could sell Benham in the white community, with the support of the bar and the Democratic leadership, because nobody knew he was black. The plan was to get out the vote in the black community in the traditional way, but to ignore race in the white community. Benham's picture could appear only on brochures distributed in the black community and there could be no endorsements of Benham by Maynard Jackson, Julian Bond, Jesse Jackson, or anybody in the civil rights community. The ability of preselected blacks to win low key judicial elections does not, however, translate into the ability of blacks to elect candidates of their choices in majority white

state house and senate districts.

Georgia argued strenuously that its 2002 senate plan could not be deemed to dilute minority voting strength because black legislators supported the plan. But the support of the plan by black legislators should not be confused with their support of the state's arguments in the Supreme Court that majority black districts could be abolished, or that the retrogression standard should be abandoned, or that minority "influence" could be a substitute for the ability to elect.

Most of the members of the Legislative Black Caucus voted for the senate plan as a way of maintaining Democratic control of the legislature and holding onto committee chairs, and because any reductions made in their own districts did not compromise their reelection or the ability of minority voters to elect candidates of their choice. The overriding goals of the Democrats were to protect incumbents and increase the number of Democratic seats by not wasting the black votes in existing majority black districts. And while black caucus members agreed to the population reductions, they would never have agreed to the abolition of majority black districts. Black caucus member Bob Holmes, who has served in the Georgia house almost as long as I have, has said that "No one would have gone for that. There would not have been a black vote for that."

Notably, the black civil rights leadership of the state, including NAACP, Southern Christian Leadership Conference, RAINBOW/PUSH, Concerned Black Clergy, Georgia Association of

Black Elected Officials, Georgia Coalition of Black Women, and Georgia Coalition for the Peoples' Agenda, filed an amicus brief in the Supreme Court urging it to affirm the decision of the lower court rejecting the state's senate redistricting plan. They asked the Court to reject the state's arguments for repeal of the retrogression standard, the abolition of majority-minority districts, and excluding minorities from the preclearance process.

Most tellingly, black members of the legislature who had voted for the state's plan gave their full support to the filing of the amicus brief and said that it was the correct position for the civil rights community to take. I made a statement at the time that:

We fully supported the filing of the amicus brief by the civil rights groups. We voted for the state's plan for political reasons, but we were appalled by the arguments the state made in its brief in Georgia v. Ashcroft. There is no question that abolishing the majority black districts would turn the clock back. The preservation of the majority black districts is critical to minority office holding and minority political participation. As its president, I can speak for the Georgia Association of Black Officials and say that we strongly disagreed with the state's arguments in the Supreme Court.

I would urge this committee to support legislation restoring the protection lost under Section 5 as a result of the Georgia v. Ashcroft decision, by making clear that the retrogression standard of Section 5 protects the ability of minority voters to elect representatives of their choice. The ability to influence the election of candidates is not an acceptable substitute for

the ability to elect. I also want to echo the sentiments of my colleagues that Georgia v. Ashcroft provides an extremely vague and difficult standard to administer.

Section 5 Objection Determinations in Georgia
(1982 – present)

State (81-1438)	Act Nos. 4, 3, and 5 (1981)--Senate, House and Congressional redistricting	2-11-82 Declaratory judgment denied as to Act No. 5 in <u>Busbee v. Smith</u> , 549 F. Supp. 494 (D.D.C. 1982), aff'd mem. 459 U.S. 1166 (1983)
DeKalb County (81-1425)	Restriction of neighborhood voter registration drives to even-numbered years and requirement that written preclearance be received	3-5-82
Adel (Cook Cty.) (81-1387)	Act No. 855 (H.B. No. 1553 (1976))--charter amendments; Ordinance No. 81-5--annexation; 21 annexations	6-29-82 Withdrawn 8-11-83 following change in method of election
Dougherty County (82-1785)	Redistricting (commissioner districts)	7-12-82
Glynn County (82-1842)	Redistricting (commissioner districts)	7-12-82
State (82-1835)	H.B. 1 EX., 1982 Extra Session Part II--proposed schedule for the conduct of 1982 Congressional elections	8-12-82
Brunswick (81-1458, 82-1837) and Glynn Cty. (81-1460 & 82-1838)	Charter for the consolidation of Glynn County and the City of Brunswick; 6:1 method of election and districting plan; procedures for referendum election (single referendum)	8-16-82
McDonough (Henry Cty.) (82-1875)	Redistricting	11-22-82
Bibb County School District (82-1690)	Act No. 1185 (H.B. No. 1918 (1982))--redistricting (board of education)	11-26-82
Sumter County School District (82-1952)	Redistricting	12-17-82
Kingsland (Camden Cty.) (7X-0076)	Numbered positions	1-3-83

Taylor County School District (82-1954)	Act No. 283 (H.B. No. 566 (1975))--method of election (board of education); redistricting decrease from 9 to 5 board members	8-19-83
Sumter County School District (83-1972)	Redistricting	9-6-83
Baldwin County School District (83-1554)	Act No. 1275, S.B. No. 614 (1972)--at-large elections	9-19-83
College Park (Clayton and Fulton Ctys.) (83-1656)	Redistricting (councilmanic districts)	12-12-83
Brunswick (Glynn Cty.) (83-1774)	Procedures for referendum election on consolidation (use of only county registration list)	2-21-84
Bacon County (83-1547; 83-1549)	Act No. 204 (H.B. No. 243 (1963))--method of election--single-member districts to at-large with residency districts	6-11-84
Bacon County (83-1544; 83-1546)	Act No. 470 (H.B. No. 786 (1983))--at-large elections; Act No. 1177 (H.B. No. 1901 (1982))--at-large elections	6-11-84
Thomas County (83-1986)	Act No. 27 (H.B. No. 762 (1983))--method of election--at-large to single-member districts; districting plan (commissioners)	7-23-84
Newnan (Coweta Cty.) (84-2106)	Act No. 640 (S.B. No. 505 (1984))--method of electing the city council from at-large to single-member districts with two at-large seats; increases the number of councilmembers from four to six; districting plan	8-31-84
McDonough (Henry Cty.)(84-2348)	Districting (councilmanic districts)	12-3-84
Griffin (Spalding Cty.) (85-2440)	Method of election--from at large to 4:1; districting plan (board of commissioners)	9-25-85
Lyons (Toombs Cty.) (85-2475)	Act No. 76 (H.B. No. 327 (1985))--method of election; districting plan	11-29-85
Forsyth (Monroe Cty.) (85-2383; 85-2388; 85-2380-2381)	Majority vote requirement; numbered positions; 10 annexations	12-17-85 Objection to annexations withdrawn 7-8-88

Lamar County (85-2316)	Act No. 513 (H.B. No. 1048 (1985))--method of election--four single-member districts and one at-large; majority vote requirement; increase in the number of county commissioners--from three to five; decrease in the terms of office--from six to four-year, staggered terms; implementation schedule; districting plan	3-18-86
Jesup (Wayne Cty.) (85-2526)	1968--numbered positions; majority vote; 1985--method of election; districting plan	3-28-86
Quitman (Brooks Cty.) (85-2047)	Method of election--from at-large to two multimember districts and one at-large position; majority vote requirement; districting plan	4-28-86
Wrens (Jefferson Cty.) (86-2974)	Majority vote requirement and the numbered posts for the election of mayor and city commission	10-20-86
Forsyth (Monroe Cty.) (87-2543)	Thirteen annexations	3-3-87 Withdrawn 7-8-88
Macon (Bibb and Jones Ctys.) (84-1966)	Deannexation (Act No. 590, S.B. No. 298 (1984))	4-24-87
Augusta (Richmond Cty.) (87-2594, 87-2595, 87-2596)	Eight annexations	7-27-87 Withdrawn 7-15-88 upon change in method of election
Rome (Floyd Cty.) (87-2336)	Act No. 240 (1987)--staggered terms and schedule for implementing staggered terms	8-11-87
Waycross (Pierce & Ware Ctys.) (87-2691)	Act No. 414 (1987)--increase in number of city commissioners from five to six, direct election of mayor by majority vote for four-year term, change in powers, duties, and authority of mayor, implementation schedule, March 8, 1988, special mayoral election	2-16-88
Lumber City (Telfair Cty.) (88-3383-3384)	Act No. 650 (1973)--majority vote requirement for the election of the mayor and council and a runoff election procedure and date, and to the provisions of the January 8, 1988, ordinance, insofar as they codify the majority vote requirement and designated posts	7-8-88
Augusta	Date selected for conducting consolidation	7-15-88

(Richmond Cty.) (88-3312) and Richmond County (88-3326)	referenda elections	
Augusta (Richmond Cty.) (88-3313) and Richmond County (88-3329)	Consolidation of the City of Augusta and Richmond County, Georgia (Act No. 934 (1988)) and the attendant repeal of the city charter for the City of Augusta (Act No. 938 (1988))	5-30-89
State (88-2560-2561)	Establishment 48 additional superior court judgeships, the specification of the date on which the first full term of office commenced for each new judgeship, and the establishment of two superior court circuits and district attorney positions to serve those circuits	6-16-89 Withdrawn 4-25-90 as to the two additional superior court circuits and the district attorney positions to serve those circuits.
Lumber City (Telfair Cty.) (89-2200-2201)	Majority vote for mayor; majority vote, numbered posts and staggered terms for at-large council positions	11-13-89
State (90-2185, 90-3077)	Establishment of ten additional superior court judgeships and the specification of the date on which the first full term of office commenced for each new judgeship	4-25-90 Declaratory judgment granted in <u>Georgia v. Reno</u> , 881 F. Supp. 7 (D.D.C. 1995)
Georgia Military College District (Baldwin Cty.) (90-2210)	Act No. 1155, S.B. No. 623 (1990)--which provides for a change from an elected board (six members elected from single-member districts in the City of Milledgeville and the mayor of Milledgeville, who is elected at large) to a statewide board of twelve members appointed by the governor	3-11-91
East Dublin (Laurens Cty.) (90-2776)	Numbered posts and a majority vote requirement for the at-large council positions	4-26-91
State (91-1051)	Act Nos. 25 and 27 (1991), which provide respectively for the establishment of an additional superior judgeship in the Atlanta and Eastern Judicial Circuits, and specify the date on which the first full term of office for each new judgeship commences	6-7-91
Elberton (Elbert Cty.) (90-2527)	Annexation embodied in Ordinance No. 951 (1989) and the apportioning of the annexed area to single-member election districts	7-2-91

Monroe (Walton Cty.) (90-4602)	Majority vote requirement for city offices	7-3-91 Deemed precleared upon failure to object to controlling provision in 1968 Georgia State Election Code <u>City of Monroe v. United States</u> (11/17/97)
Hinesville (Liberty Cty.) (90-2784)	Adoption of a majority vote requirement for the election of the mayor	7-15-91
Athens-Clarke County (91-1258)	Act No. 28 (1990), which provides for an additional State Court judgeship, the creation of the State Court clerk's position, and the specification of the dates on which the relevant terms of the offices begin in the context of an at-large method of election with a majority vote requirement, and with anti-single-shot provisions in the judgeship elections	10-1-91 Withdrawn 10-23-95
State (91-3556; 91-3557 and 91-3558)	1991 redistricting plans for Georgia State House, Senate and Congressional districts	1-21-92
Sparta (Hancock Cty.) (91-2166)	Adoption of numbered positions for city council elections	2-4-92
State (89-2268)	Reduce the minimum number of permanent satellite voter registration locations to be established by certain counties, and eliminate the requirement for Saturday registration hours for satellite voter registration locations in the period outside the six months preceding the close of registration for November general elections in even-numbered years	2-11-92
State (92-1035; 92-0712 and 92-0713)	1992 redistricting plans for Georgia State House, Senate and Congressional districts	3-20-92
State (92-1440)	Second 1992 redistricting plan for the Georgia State House	3-29-92
Effingham County (92-1162)	Act No. 608 (1992), which provides for a change in the method of selecting the chairperson from appointment among the commissioners to election from the county at	7-20-92

	large; expansion of the number of officials on the board of county commissioners from five to six; an increase in the term of the chairperson from a one-year to a four-year term; and the increase in the compensation for the chairperson	
Union City (Fulton Cty.) (92-2037)	Annexation embodied in Ordinance No. 92-5	10-23-92 Withdrawn 8-9-93
Johnson County (92-3863)	Relocation of the polling place for the Wrightsville precinct from the county courthouse to the American Legion	10-28-92
Griffin (Spalding Cty.) (92-3226)	1992 redistricting plan	11-30-92
Conyers (Rockdale Cty.) (92-4776)	32 residential annexations	2-16-93 Withdrawn 9-23-93 upon change in method of election
Twiggs County (93-0701)	Procedures for conducting the March 16, 1993, special tax referendum	3-12-93
Butler (Taylor Cty.) (88-3378; 92-3058)	Majority vote requirement and runoff provision for mayor	6-25-93
Randolph County (93-0299-0300)	1993 redistricting plan for the board of commissioners; 1993 districting plan and qualifications to serve in office for the board of education	6-28-93
Millen (Jenkins Cty.) (93-2161)	Implementation schedule	8-2-93
Baldwin County (93-2097)	Method of selecting magistrate: nonpartisan elections with majority vote requirement	8-13-93
Clay County School District (93-2816)	Qualifications to serve in office for the board of education (minimum education requirement)	10-12-93
Early County School District (93-1830)	Qualifications to serve in office for the board of education (minimum education requirement)	10-15-93
Monroe (Walton Cty.) (93-1647)	Method of election and districting plan	10-22-93
McIntyre (Wilkinson Cty.) (93-1432)	Majority vote requirement in elections to fill a town council vacancy	11-9-93

LaGrange (Troup Cty.) (93-1248; 93-1372 and 93-3303)	Method of election: 4 single-member districts and two at large	12-13-93
Waynesboro (Burke Cty.) (88-2659)	Majority vote requirement for mayor	5-23-94
State (94-1595)	Act No. 774 (1994), which provides for a 45 percent plurality requirement in partisan and nonpartisan general elections	8-29-94 Withdrawn 9-11-95
Fayette County (94-2005 and 94-3614)	Act No. 1129 (1994), which provides for the creation of a state court, establishes four-year terms for an elected judge and solicitor (nonpartisan judicial election), candidate qualifications including residency requirements, compensation for elected positions, an implementation schedule, and designates the clerk of the Superior Court the clerk for the State Court	9-16-94 Withdrawn 10-23-95
LaGrange (Troup Cty.) (94-2267)	Act No. 652 (1994), which provides for an increase in the number of city councilmembers from six to seven, a change in the method of electing the city council from at large to four single-member districts, two "super" districts, and one at-large position	10-11-94
State (94-2672)	Voter purge procedures proposed by Act No. 1207 (1994), which provided for mailing a registration confirmation notice to any voter that does not vote or otherwise have "contact" with the state's election administration system for a three-year period	10-24-94
Decatur County (94-2499)	Establishment of an elected chairperson, the increase in the number of county commissioners and the change in the method of election	11-29-94
Macon (Bibb and Jones Ctys.) (94-4188)	Redistricting plan	12-20-94
Fulton County (94-4447)	Act No. 731 (1994)--addition of a ninth state court judgeship, four-year term of office, and implementation schedule	1-24-95 Withdrawn 10-23-95
Jenkins County	Polling place (District 1)	3-20-95

(94-2260)		
State (95-3656)	1995 Georgia State House and Senate redistricting plans	3-15-96 Withdrawn 10-15-96
Webster County School District (98-1663) (pdf)	Redistricting plan	1-11-00
Tignall (Wilkes Cty.) (99-2122) (pdf)	Proposed addition of numbered posts, staggered terms and a majority vote requirement to the method of electing councilmembers	3-17-00
Ashburn (Turner Cty.) (94-4606) (pdf)	Adoption of numbered posts and majority-vote requirement	10-1-01
Putnam County (2002-2987) (pdf)	2001 redistricting plan	8-9-02
Putnam County School District (2002-2988) (2002-2987) (pdf)	2001 redistricting plan	8-9-02
Albany (Dougherty Cty.) (2001-1955) (pdf)	2001 redistricting plan	9-23-02
Marion County School District (2002-2643) (pdf)	2002 redistricting plan	10-15-02